

COMMENTS TO PROPOSED
MCR 2.512, MCR 2.513, & MCR 2.514

By Daniel J. Van Antwerp ex-D36
P21703
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Rule 2.512

(A) Request for Instructions

(5) ADD AFTER FIRST SENTENCE: "With the approval of the court on the record, the parties may waive any statements or theories being given from either those submitted by the parties or by the judge sua sponte."

Rule 2.513

(A) Preliminary Instructions

I OBJECT TO THE SECOND LAST SENTENCE THAT READS: "The court shall provide each juror with a copy of such instructions." THIS IS A WASTE OF TIME. OFTEN THE ATTORNEYS JUST CITE THE SJI NUMBER (I SEE NO REQUIREMENT FOR THE REQUESTED SJI TO BE TYPED OUT IN ITS ENTIRETY ONLY IN THIS SECTION OF THE PROPOSED RULE). FOR THAT REASON, PLUS "SPECIAL" INSTRUCTIONS ARE SOMETIMES HANDWRITTEN. IT PUTS A BURDEN ON THE COURT STAFF TO TYPE AND COPY SUCH NUMEROUS PRELIMINARY INSTRUCTIONS. FURTHERMORE, THE JURY DOESN'T WANT TO PHYSICALLY CARRY AROUND FIVE OR TEN PAGES DURING A LENGTHY TRIAL – IS THAT YOURS OR IS THAT MINE? – I LOST MY PAGE ELEVEN, MAYBE I CAN COPY YOURS ON THE BACK OF MY PAGE TEN OR TWELVE? ANOTHER JUROR SAYS HER HUSBAND LOOKED AT THE INSTRUCTIONS AND THAT HER INTERPRETATION OF THEM WAS ALL WRONG. FURTHERMORE, SHE HAD BEEN CARRYING THEM AROUND DILIGENTLY SO FAR FOR TWO WEEKS, AND YESTERDAY SHE HAD SOUP IN THE CAFETERIA AND SPILLED THE SOUP ON HER COPIES – IT WENT THROUGH ALL TEN PAGES!

(D) Interim Commentary. RULE DOESN'T STATE THAT PERMISSION SHOULD BE SOUGHT BEFORE LAUNCHING INTO IT.

(E) Reference Documents. WITNESSES SOMETIMES ARE UNKNOWN UNTIL THE END OF EACH SIDE'S CASE. I'VE HAD LISTS OF SIXTY PERSONS ON EACH SIDE AND ONLY EIGHT OR TEN ARE CALLED. I ALWAYS ASK THE ATTORNEYS BEFORE STARTING THE TRIAL WHICH ONES THEY PROBABLY WILL CALL – SO I CAN QUESTION THE JURORS WHETHER THEY KNOW THEM. BUT TACTICS OF THE TRIAL CHANGE ON WHOM ARE CALLED. AN ATTORNEY WOULD LOOK BAD IF HE FURNISHES A LIST AND SAYS HE'S

ADDITIONAL COMMENT:

NO WHERE IN THE RULES PRESENTED DOES IT STATE WHAT PENALTIES SHOULD BE IMPOSED IF, FOR EXAMPLE, A LAZY ATTORNEY DOES NOT COMPLY WITH THOSE RULES. CONTEMPT OF COURT, DISMISSAL OF THE CASE, MISTRIAL, OR DEFAULT JUDGMENT ARE SOME OF THE POSSIBILITIES I CAN THINK OF. WHAT ABOUT AN ATTORNEY WHO IS AT ODDS WITH THE COURT AND DELIBERATELY REFUSES TO COMPLY (E.G. SUBMITTING A STATEMENT OF ISSUES).

I'M SORRY THAT MY COMMENTS HAVE BEEN SO CASUAL. I WISH I HAD MORE TIME TO POLISH THEM UP.

DJV